

EXHIBIT 1

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 9. Application for Attorneys' Fees under Circuit Rule 39-1.6

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form09instructions.pdf>

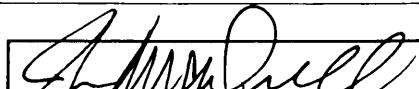
9th Cir. Case Number(s) 23-60006, 23-60017

Case Name Milestone Financial LLC v. Mark and Lori Moon

For each amount claimed, please attach itemized information indicating service provided, date, hours, and rate.

DESCRIPTION OF SERVICES	Hours	Amount Claimed
Interviews and Conferences	2.4	\$ 1,020
Obtaining and Reviewing Records	4.8	\$ 2,040
Legal Research	61	\$ 25,925
Preparing Briefs	61.7	\$ 26,222.5
Preparing for and Attending Oral Argument	10.8	\$ 4,590
Other (specify below) Legal research and writing briefs were intertwined so 1/2 of 122.7 hours goes to each (this includes mediation and extensions). Also there is 12.5 hours preparing fee motion	12.5	\$ 5,312.5
Total Hours/Compensation Requested:	153.2	\$ 65,110

Signature



Date

May 13, 2024

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

23-60006 and 23-60011 (consolidated)**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In re: MARK E. MOON,

Debtor

MILESTONE FINANCIAL, LLC,

Appellant

v.

E. MARK MOON and LORI H. MOON,

Appellees

Appeal from the United States Bankruptcy Appellate Panel
of the Ninth Circuit

Bankruptcy Appellate Panel Docket No. 22-1117

Bankruptcy Case No. 20-30711-DM

Adversary Case No. 20-03117-DM

APPELLEES' MOTION FOR ATTORNEYS' FEES

JOHN P. McDONNELL (State Bar No. 77369)
295 89th Street, Ste. 200
Daly City, CA 94015
Telephone: 650-991-9909
Email: JPMcDON@aol.com

Attorney for Mark and Lori Moon

TABLE OF CONTENTS

POINTS AND AUTHORITIES	1
CALCULATION OF THE FEE REQUEST	4
A. The amount of time expended on each part of the appeal was reasonable.	5
1. The time defending the Milestone appeal.....	5
a. Addressing Milestone's restatements of its <i>Ghirardo</i> argument....	6
b. Locating and presenting the law in <i>Westman v. Dye</i>	6
c. Dealing with the two new arguments raised by Milestone.	7
d. The Moons' attorney tried to convince Milestone's attorney to drop the appeal to the Ninth Circuit.	7
2. Work on the Cross-Appeal.....	8
CONCLUSION.....	10

TABLE OF AUTHORITIES

Cases

DisputeSuite.com, LLC v. Scoreinc.com (2017) 2 Cal.5th 968	2
Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc. (2012) 211 Cal.App.4th 230	3
Epstein v. Frank (1981) 125 Cal.App.3d 111	9
Frog Creek Partners, LLC v. Vance Brown, Inc. (2012) 206 Cal.App.4th 515.....	2
Ghirardo v. Antonioli, 8 Cal. 4th 791, 804 (1994)	5, 6
Mustachio v. Great Western Bank (1996) 48 Cal.App.4th 1145.....	2

<i>PLCM Group, Inc. v. Drexler</i> , 22 Cal.4th 1084	4
<i>Puppo v. Larosa</i> (1924) 194 Cal. 717	3
<i>Roberts v. Packard, Packard & Johnson</i> (2013) 217 Cal.App.4th 822	2
<i>Westman v. Dye</i> (1931) 214 Cal. 28	7

Statutes

Cal. Civil Code §1504.....	9
Cal. Civil Code §1717.....	1, 3

Constitutional Provisions

Article XV of the California Constitution.....	5
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Pursuant to Circuit Rule 39-1, Appellees Mark and Lori Moon hereby move for an award of attorneys fees pursuant to Cal. Civil Code §1717.

POINTS AND AUTHORITIES

Cal. Civil Code §1717 provides that whenever a written contract provides that one of the parties is entitled to collect attorneys' fees if that party prevails in an action, then the provision is made reciprocal as a matter of law, and whichever party prevails in the action is entitled to an award of attorneys' fees. The loan agreement between the Moons and Milestone Financial LLC contained such an attorneys' fee provision.

In its Judgment entered May 25, 2022, the Bankruptcy Court ruled that the Moons were the prevailing party in the action. (Judgment at Milestone's Excerpt of Record, 035). This Court has affirmed that judgment in all respects. The Bankruptcy Court confirmed that the Moons were the prevailing party in its Judgment Awarding Attorneys' Fees entered July 13, 2022. Milestone did not appeal that Judgment, so it is not in the record. It is Docket Entry #127 in the Bankruptcy Court records of Adversary Proceeding No. 20-03117.

California law provides that there can be only one prevailing party in an action on a contract.

[I]n any given lawsuit there can only be one prevailing party on a single contract for the purposes of an entitlement to attorney fees.

Frog Creek Partners, LLC v. Vance Brown, Inc. (2012) 206 Cal.App.4th 515, 531.

Under § 1717, there may only be one prevailing party entitled to attorney fees on a given contract in a given lawsuit.

Roberts v. Packard, Packard & Johnson (2013) 217 Cal.App.4th 822, 823.

California further provides that the prevailing party on the contract is entitled to recover all its fees incurred in the action, *including* fees on interim proceedings in which the party did not prevail.

[T]he general rule remains that the prevailing party is entitled to all reasonable fees, without offset for interim victories by the other party. (*Presley of Southern California v. Whelan, supra*, at p. 963; see *Mustachio v. Great Western Bank* (1996) 48 Cal.App.4th 1145, 1148, 1150 [plaintiff who prevailed on contract action was entitled to her reasonable fees under § 1717, including fees expended on multiparty appeal, even though appeal resulted in reversal of a punitive damages award].

DisputeSuite.com, LLC v. Scoreinc.com (2017) 2 Cal.5th 968 at 977.

The defendant was thus the prevailing party on the contract and, under prior appellate decisions, was “entitled to all of its fees, including fees incurred during the lawsuit in proceedings where it did not prevail.”

DisputeSuite.com, LLC v. Scoreinc.com (2017) 2 Cal.5th 968 at 977,

quoting and following *Frog Creek Partners, supra*, accord, *Roberts v. Packard, Packard & Johnson* (2013) 217 Cal.App.4th 822, 840

As pointed out by the Supreme Court, the prevailing party in the case of *Mustachio v. Great Western Bank* (1996) 48 Cal.App.4th 1145, was

entitled to recover all of her fees under §1717, even though an interim appeal had reduced the amount of her punitive damages. The *Mustachio* case was also followed in *Frog Creek Partners, LLC*, *supra*, at 546.

Thus, the Moons, as the prevailing party in the action, are entitled to recover all of their fees on both the appeal by Milestone *and* the cross-appeal by the Moons.

A final case should be mentioned. In the Bankruptcy Court, the Moons argued that the award of “post maturity” interest was not an “action on the contract” under Cal. Civil Code §1717, citing, citing *Puppo v. Larosa* (1924) 194 Cal. 717,720, (holding that the award of post-maturity interest is in the nature of damages for the retention of the debt, “and is not recoverable by virtue of any provision of the contract”). Milestone argued that it was entitled to its attorneys’ fees for defending the Cross-Appeal at the Bankruptcy Appellate Panel (“BAP”)

In a March 23, 2024 Order relating to the competing claims for attorneys’ fees for the work on the interim appeal to the BAP, the Bankruptcy Court stated that the *Puppo v. Larosa* case was not applicable in the context of Civil Code §1717. The Court cited more recent cases, including *Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230, and determined that the issue of post-maturity interest

was included as an “action on the contract.”

CALCULATION OF THE FEE REQUEST

“[T]he fee setting inquiry in California ordinarily begins with the ‘lodestar,’ i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate . . . The reasonable hourly rate is that prevailing in the community for similar work.” *PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1095 (Cal. 2000)

In the present case, the Bankruptcy Court already determined, in its Judgment Awarding Attorneys' Fees, that the \$425 per hour rate charged by attorney John McDonnell was the reasonable hourly rate.

As shown in the supporting declaration of attorney McDonnell, the amount of hours expended on the Milestone appeal of the usury judgment was 63.8, and the amount of hours expended on the cross-appeal on the “post-maturity” interest was 76.9. The McDonnell declaration contains the detailed time records of all the time spent on each part of the appeal.

As explained by Mr. McDonnell, when Milestone filed its appeal on the usury issue, the BAP assigned it case number 22-1103, and when the Moons filed the cross-appeal on the “post-maturity” interest, the BAP assigned it case number 22-1117. For internal accounting purposes, and to present clear time records for the client, McDonnell set up two separate

matter numbers, Moon 1103 and Moon 1117. When Milestone appealed the BAP decision to this Court, McDonnell kept these same matter numbers to track the Milestone appeal time and the Moon cross-appeal time.

A. The amount of time expended on each part of the appeal was reasonable.

1. The time defending the Milestone appeal.

As outlined in the Declaration of John McDonnell, the major work on this appeal involved responding to Milestone's repeated arguments that *Ghirardo v. Antonioli*, 8 Cal. 4th 791, 804 (1994) made all extensions of loans exempt from the usury law. But the work on the Milestone appeal also involved three new areas not previously involved in either the trial court or the BAP.

First, the work on the Milestone appeal involved *new* research demonstrating conclusively that under California law, an extension of a loan can be usurious even if the initial loan was non-usurious. Second, Milestone raised two new *incorrect* claims: (1) that Article XV of the California Constitution required that a contract be in writing to be subject to the usury law, and (2) that Article XV already provided an exception to loans and forbearances arranged by a real estate broker.

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a. Addressing Milestone's restatements of its *Ghirardo* argument.

In both the trial court and the BAP, Milestone had primarily argued variations on its argument that the extension of the loan agreement was outside the scope of the California usury law due to language in *Ghirardo v. Antonioli*, 8 Cal. 4th 791, 804 (1994). Both the trial court and the BAP rejected this issue, holding that the *Ghirardo* case was limited to “credit sale” transactions, and had no application to a loan or forbearance of money. Milestone continued to argue this issue in this Court. It rearranged some of its arguments and misstated the facts and law in *Ghirardo* (for example, continually referring to the transactions in *Ghirardo* as “loans” instead of sales). Once a party misstates the law and the facts, it takes considerable effort to present the full scope of the actual law, in order to provide a correct picture of the law. The *Ghirardo* argument was Milestone's major attempt to win the case, and Milestone changed its arguments somewhat from the arguments made in the lower courts. So it was necessary for Plaintiffs' counsel to rewrite, tighten and change the prior BAP brief to more accurately disprove the claims in Milestone's Opening Brief.

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b. Locating and presenting the law in *Westman v. Dye*.

Most significantly, Plaintiffs' counsel conducted further research that located California cases that held, contrary to Milestone's main argument, that the law in California has always provided that an extension of a loan can be usurious even if the original loan was non-usurious. See pp. 14-16 of the Second Brief, and the discussion of *Westman v. Dye* (1931) 214 Cal. 28.

c. Dealing with the two new arguments raised by Milestone.

Having failed twice with its *Ghirardo* argument, Milestone *added two new* misstatements of the law to its brief in this court. In the trial court and the BAP, Milestone barely mentioned Article XV of the California Constitution. But in its appeal to this Court, it argued that: (1) Article XV requires that a contract must be in writing to be subject to the usury laws (Milestone Opening Brief, Docket #21, pp. 15-18) and (2) Article XV actually created an exception to the usury law for any loan *or forbearance* arranged by a real estate broker (p. 26 of the Opening Brief).

As shown at length in the Second Brief, both of these claims were supported by Milestone misstating *and falsely editing* the statute. See the discussion of these two items at pp. 33-37 of the Second Brief.

d. The Moons' attorney tried to convince Milestone's attorney to drop the appeal to the Ninth Circuit.

As soon as Milestone's attorney, Mr. Bernard Kornberg, filed the

appeal to the Ninth Circuit, Mr. McDonnell wrote to him and suggested that the BAP decision had devastated his *Ghirardo* arguments, and Milestone should not waste money on a further appeal that will not only cost them money, but will also result in them paying more of the Moons' attorneys' fees. The full text of the February 3, 2023 e-mail to Mr. Kornberg is attached as Exhibit A to the McDonnell declaration in support of this motion. That e-mail reads, in part,

[Y]ou might consider saving yourself a lot of trouble and folding your cards now. The BAP decision made it clear, in meticulous detail, that you are wrong and *Ghirardo* can not be extended to repeal California law....

Thus, there is a large body of case law suggesting that DCM and *Ghirardo* reached the wrong result. There is no law to support the argument that *Ghirardo* should be extended to repeal the usury law with respect to all forbearances. As the BAP said, there is nothing in any of your arguments that will convince a court to rewrite California law. ...

So, Milestone will lose once again and will be paying more of my attorneys fees....

2. Work on the Cross-Appeal.

In both the trial court and the BAP, the Moons had primarily argued that Milestone should not be allowed "post-maturity" interest from the July 31, 2016 due date of the loan, because the Moons had previously attempted to pay the loan in full in April 2019, and this payoff was prevented by Milestone demanding illegal usurious interest and an illegal

10%. The Moons' arguments were primarily variations on a claim of estoppel. The Bankruptcy Court stated that it found these arguments interesting, but they did not provide a sufficient basis for departing from the settled California law in *Epstein v. Frank* (1981) 125 Cal.App.3d 111.

The BAP was also unpersuaded by the Moons' arguments, but the BAP decision seemed to be based in large part on its view that the contract may not have included a requirement for Milestone to provide a payoff demand. This issue had not been briefed to the BAP.

So a large part of the Second Brief on the cross-appeal argued that Milestone was required, both by the terms of its loan agreement, and by California law, to provide a legal payoff demand. See the discussion at pp. 52-55 of the Second Brief. It is noteworthy that Milestone did not dispute these arguments (instead, it argued, incorrectly, that the Moons had abandoned their breach of contract claims, Third Brief at pp. 21-23).

Moons' counsel also recognized that the "estoppel" claims had been too general or vague for the trial court and the BAP. Therefore, counsel conducted further research and focused on Cal. Civil Code §1504, the *statutory* basis for cutting off Milestone's right to interest. See pages 47-52 of the Second Brief. Thus, the work for this appeal involved mainly new work that had not been done in the Bankruptcy Court or the BAP.

Ultimately, this Court rejected the Moons' argument, holding that their attempt to pay the loan in April 2019 was not a valid tender. Memorandum Decision at p. 5.

CONCLUSION

For the foregoing reasons, and based upon the evidence in the McDonnell declaration, the Moons suggest that all the time on the Milestone appeal and the Cross-Appeal was reasonably expended, and the court should award the full amounts requested by the Moons, \$27,115.00 on the Milestone appeal and \$32,682.50 on the Cross-Appeal. As further set forth in the McDonnell Declaration, McDonnell has spent 12.5 hours collecting the facts, preparing this memo and preparing his declaration. The Court should award \$5,312.50 for this work.

Date: May 13, 2024

/s/ John McDonnell

John P. McDonnell, Esq.
Attorney for Appellees

23-60006 and 23-60011 (consolidated)**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In re: MARK E. MOON,

Debtor

MILESTONE FINANCIAL, LLC,

Appellant

v.

E. MARK MOON and LORI H. MOON,

Appellees

Appeal from the United States Bankruptcy Appellate Panel
of the Ninth Circuit

Bankruptcy Appellate Panel Docket No. 22-1117

Bankruptcy Case No. 20-30711-DM

Adversary Case No. 20-03117-DM

**DECLARATION Of ATTORNEY JOHN McDONNELL ON
APPELLEES' MOTION FOR ATTORNEYS' FEES**

JOHN P. McDONNELL (State Bar No. 77369)
295 89th Street, Ste. 200
Daly City, CA 94015
Telephone: 650-991-9909
Email: JPMcDON@aol.com

Attorney for Mark and Lori Moon

I, John P. McDonnell, hereby declare as follows:

1. I am a citizen of the United States over eighteen years of age, and I could testify competently as to the following matters.

2. I am attorney licensed to practice law in California and have been so licensed since 1977. I am the attorney for the Plaintiff Moons in this case, and have represented the Moons in this case at all times from the beginning of the case in state court prior to removal. I have continued as their attorney in this Adversary Proceeding and on Milestone's appeal to the Bankruptcy Appellate Panel ("BAP") and on Milestone's Appeal to the Ninth Circuit.

3. After the entry of Judgment in this case, Milestone filed its Notice of Appeal to the BAP on May 27, 2022, and filed a Motion for Relief from stay in the Bankruptcy Court. A few weeks later, around June 16, 2022, I filed a cross-appeal in the case.

4. When Milestone filed its appeal on the usury issue to the BAP, the BAP assigned it case number 22-1103. When the Moons later filed the cross-appeal on the "post-maturity" interest, the BAP assigned it case number 22-1117. For internal accounting purposes, and to present clear time records for the client, I set up two separate matter numbers, Moon 1103 and Moon 1117. When Milestone appealed the BAP decision to

this Court, I kept these same matter numbers to track the Milestone appeal time and the Moon cross-appeal time.

5. In January 2023, the BAP affirmed the Bankruptcy Court Judgment in all respects. The attorney for Milestone, Bernard Kornberg, immediately filed a Notice of Appeal to appeal the case to the Ninth Circuit. I promptly wrote to Mr. Kornberg and suggested that the BAP decision had devastated his *Ghirardo* arguments, and that Milestone should not waste money on a further appeal that will not only cost them money, but will also result in them paying more of the Moons' attorneys' fees. The fruitless Milestone appeal would also needlessly burden the courts. The full text of the February 3, 2023 e-mail to Mr. Kornberg is attached as Exhibit A to the McDonnell declaration in support of this motion. That e-mail reads, in part,

[Y]ou might consider saving yourself a lot of trouble and folding your cards now. The BAP decision made it clear, in meticulous detail, that you are wrong and Ghirardo can not be extended to repeal California law....

Thus, there is a large body of case law suggesting that DCM and Ghirardo reached the wrong result. There is no law to support the argument that Ghirardo should be extended to repeal the usury law with respect to all forbearances. As the BAP said, there is nothing in any of your arguments that will convince a court to rewrite California law. ...

So, Milestone will lose once again and will be paying more of my attorneys fees....

6. For over 30 years, I have kept careful contemporaneous track of my time in the Day-Timer record system. This system accounts for each minute of the day. During the day, I track the time for each client matter that I work on that day. I personally input the daily time into the Timeslips billing system. I bill all my clients in increments of 6 minutes.

7. Attached as Exhibit B is the detailed time report for the time I spent on the Milestone appeal of the usury issue in this case. It has the code "Moon 03 Appeal." These records show that the total time for the Milestone 1103 appeal was 68.3 hours. At the \$425 per hour rate, this totals \$27,115.

8. The Milestone appeal involved a great deal of work. The major work on this appeal involved responding to Milestone's repeated arguments that *Ghirardo v. Antonioli*, 8 Cal. 4th 791, 804 (1994) made all extensions of loans exempt from the usury law. But the work on the Milestone appeal also involved three new areas not previously involved in either the trial court or the BAP.

First, the work on the Milestone appeal involved new research demonstrating conclusively that under California law, an extension of a loan can be usurious even if the initial loan was non-usurious. Second, Milestone raised two new incorrect claims: (1) that Article XV of the

California Constitution required that a contract be in writing to be subject to the usury law, and (2) that Article XV already provided an exception to loans and forbearances arranged by a real estate broker.

9. In both the trial court and the BAP, Milestone had primarily argued variations on its argument that the extension of the loan agreement was outside the scope of the California usury law due to language in *Ghirardo v. Antonioli*, 8 Cal. 4th 791, 804 (1994). Both the trial court and the BAP rejected this issue, holding that the *Ghirardo* case was limited to “credit sale” transactions, and had no application to a loan or forbearance of money. Milestone continued to argue this issue in this Court. It rearranged some of its arguments and misstated the facts and law in *Ghirardo* (for example, continually referring to the transactions in *Ghirardo* as “loans” instead of sales). Once a party misstates the law and the facts, it takes considerable effort to present the full scope of the actual law, in order to provide a correct picture of the law. The *Ghirardo* argument was Milestone's major attempt to win the case, and Milestone changed its arguments somewhat from the arguments made in the lower courts. So it was necessary for me to rewrite, tighten and change the prior BAP brief to more accurately disprove the claims in Milestone's Opening Brief.

10. Most significantly, I conducted further research that located California cases that held, contrary to Milestone's main argument, that the law in California has always provided that an extension of a loan can be usurious even if the original loan was non-usurious. See pp. 14-16 of the Second Brief, and the discussion of *Westman v. Dye (1931)* 214 Cal. 28.

11. Milestone added two new arguments to its Brief in the Ninth Circuit, that it did not raise in the Bankruptcy Court or the BAP. In the trial court and the BAP, Milestone barely mentioned Article XV of the California Constitution. But in its appeal to this Court, it argued that: (1) Article XV requires that a contract must be in writing to be subject to the usury laws (Milestone Opening Brief, Docket #21, pp. 15-18) and (2) Article XV actually created an exception to the usury law for any loan or *forbearance* arranged by a real estate broker (p. 26 of the Opening Brief).

As shown at length in the Second Brief, both of these claims were supported by Milestone misstating and *falsely editing* the statute. See the discussion of these two items at pp. 33-37 or the Second Brief.

12. Attached as Exhibit C is the detailed time report for the time I spent on the Cross-Appeal. It has the code "Moon 17 Appeal." These records show that the total time for the Cross-Appeal appeal was 76.9 hours. At the \$425 per hour rate, this totals \$32,682.50.

13. The work on the Cross-Appeal in this Court also involved a great deal of new work. In both the trial court and the BAP, the Moons had primarily argued that Milestone should not be allowed “post-maturity” interest from the July 31, 2016 due date of the loan, because the Moons had previously attempted to pay the loan in full in April 2019, and this payoff was prevented by Milestone demanding illegal usurious interest and an illegal 10%. The Moons’ arguments were primarily variations on a claim of estoppel. The Bankruptcy Court stated that it found these arguments interesting, but they did not provide a sufficient legal basis for departing from the settled California law in *Epstein v. Frank* (1981) 125 Cal.App.3d 111.

The BAP was also unpersuaded by the Moons’ arguments, but the BAP decision seemed to be based in large part on its view that the contract may not have included a requirement for Milestone to provide a payoff demand. This issue had not been briefed to the BAP.

So a large part of the Second Brief on the cross-appeal argued that Milestone was required, both by the terms of its loan agreement, and by California law, to provide a legal payoff demand. See the discussion at pp. 52-55 of the Second Brief. It is noteworthy that Milestone did not dispute these arguments (instead, it argued, incorrectly, that the Moons had

abandoned their breach of contract claims, Third Brief at pp. 21-23).

I also recognized that the “estoppel” claims had been too general or vague for the trial court and the BAP. Therefore, I conducted further research and focused on Cal. Civil Code §1504, the *statutory* basis for cutting off Milestone's right to interest. See pages 47-52 of the Second Brief. Thus, the work for this appeal involved mainly new work that had not been done in the Bankruptcy Court or the BAP.

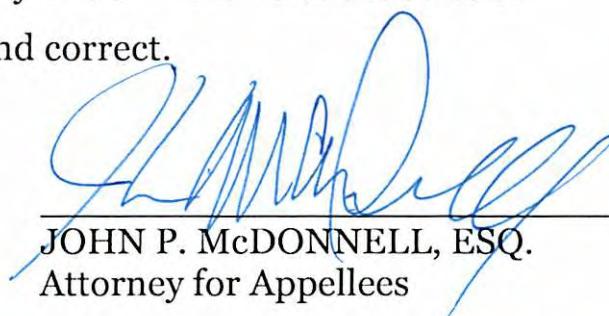
Ultimately, this Court rejected the Moons' argument, holding that their attempt to pay the loan in April 2019 was not a valid tender.

Memorandum Decision at p. 5.

14. In addition, I have had to spend 12.5 hours reviewing the Ninth Circuit rules for fee applications, collecting the records, preparing the Motion for fees and preparing this declaration. The amount of fees for this, at the \$425 per hour rate, is \$5,312,50 and the Court should award this amount also.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Dated: May 13, 2024



JOHN P. McDONNELL, ESQ.
Attorney for Appellees

EXHIBIT A



From: JOHN McDONNELL jpmcdon@aol.com
Subject: Re: Motion for Attorneys' Fees
Date: February 3, 2023 at 4:37 PM
To: Bernard Kornberg Bernard.Kornberg@practus.com

Or, you might consider saving yourself a lot of trouble and folding your cards now. The BAP decision made it clear, in meticulous detail, that you are wrong and Ghirardo can not be extended to repeal California law. Beyond the arguments that I made, the court came up with the law showing that the traditional rule is that the extension of a credit sale loan IS subject to the usury laws. The court even cited an ALR report for this, and pointed out at page 17, "Ghirardo and DCM Partners rejected the traditional rule."

Thus, there is a large body of case law suggesting that DCM and Ghirardo reached the wrong result. There is no law to support the argument that Ghirardo should be extended to repeal the usury law with respect to all forbearances. As the BAP said, there is nothing in any of your arguments that will convince a court to rewrite California law.

And don't overlook the statement in footnote 5: "In our discussion when we refer to an "exception" from the usury laws, we mean that it is not subject to the usury laws. When we refer to something as "exempt" from the usury laws, we mean that it is subject to California's usury laws but has been declared exempt from them. This is a distinction that Milestone elides, but the distinction is fatal to its argument." So once again, there is a huge wall between credit sales and loans, and no court is going to tear it down, and rewrite California law.

So, Milestone will lose once again and will be paying more of my attorneys fees. Moreover, if Milestone persists on this appeal, I will recommend that Moon pursue our cross-appeal. In contrast to the meticulous dismantling of the Milestone appeal, there is a lot of mush in their discussion of our appeal, and I think it comes back to the same hesitation as Judge Montali, not to change the Epstein rule in absence of some pre-existing California authority. I think the 9th circuit would be more bold.

So, let me know what you want to do. I understand moving the mediation conference while you are actually in arbitration, but I don't see why you can't deal with the fee motion after that. Mr. Cohen already made the template on the earlier motion.

John P. McDonnell, Esq.
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 Telephone: 650-991-9909
 Facsimile: 650-449-7789
JPMcDON@aol.com

On Feb 2, 2023, at 9:48 AM, Bernard Kornberg <Bernard.Kornberg@practus.com> wrote:

John,

I reviewed your motion for attorneys' fees today. I've been tasked with the primary opposition and am out of pocket for the next two weeks due to an arbitration. I would request we continue the hearing to March 17, 24, or 31 to allow time for me to return and draft the opposing brief. Please let me know if that is agreeable, and if so, I can draft a stipulation or you can file an amended notice, whatever your preference.

Bernie



Bernard Kornberg 
Partner
 Practus, LLP
 Direct Phone: 341.234.6629
 E-mail: Bernard.Kornberg@practus.com
 Website: www.practus.com

EXHIBIT B

Date 5/12/24
Time 2:39 PM

Law Offices
Client Billing Worksheet

Page 1

=Selection criteria:=====

Date range : 1/20/23 through 4/17/23
Slip numbers : All
Attorney : All
Client : Moon
Activity : All
Matter : Milestone 03 appeal
Hours : All
Dollars : All
Variance : not checked
Billing status : All
Slip status : All

Moon :Mr. Mark Moon
11 Mandalay Court
Redwood City, CA 94065
Phone :415-608-3553
Time rounded up to nearest 6 minutes(s)

Last bill : 8/9/21 Next aging : 5/30/24
Last payment Amount

Date/Slip#	Description	Hours/Rate	Amount	Total
1/20/23 #12743	JPM 425 / Legal Work Attention to documents from 9th Circuit re information on appeals in 9th Cir. Milestone 03 appeal	0.80 425.00	340.00	
1/21/23 #12744	JPM 425 / Legal Work Full review of BAP decision for analysis of Milestone appeal to 9th Milestone 03 appeal	1.20 425.00	510.00	
1/23/23 #12745	JPM 425 / Legal Work Review Milestone Mediation statement filed with 9th [no charge] Milestone 03 appeal	0.00 425.00	0.00	
1/24/23 #12746	JPM 425 / Legal Work Further on specific 9th cir rules for appeals Milestone 03 appeal	0.20 425.00	85.00	
2/6/23 #12780	JPM 425 / Legal Work Attention to Kornberg stipulation for moving hearing date & 9th mediation Milestone 03 appeal	0.30 425.00	127.50	
2/21/23	JPM 425 / Legal Work	0.20	85.00	

Date 5/12/24
Time 2:39 PMLaw Offices
Client Billing Worksheet

Page 2

Moon :Mr. Mark Moon (continued)

Date/Slip#	Description	Hours/Rate	Amount	Total
#12810	Call on 9th cir mediation Milestone 03 appeal	425.00		
2/24/23	JPM 425 / Legal Work	0.40	170.00	
#12820	Call with Mediator re 9th cir program and settlement Milestone 03 appeal	425.00		
3/15/23	JPM 425 / Legal Work	0.50	212.50	
#12857	Pull up Court of Appeal analysis and reasoning in Ghirardo Milestone 03 appeal	425.00		
4/11/23	JPM 425 / Legal Work	0.70	297.50	
#12892	Attention to record on appeal Milestone needs to file Milestone 03 appeal	425.00		
5/2/23	JPM 425 / Legal Work	0.00	0.00	
#12929	Obtain current docket at 9th Cir [no charge] Milestone 03 appeal	425.00		
5/11/23	JPM 425 / Legal Work	0.00	0.00	
#12934	Attention to potential amicus; notes on likely arguments; Garcia case, Winnett and others Milestone 03 appeal	425.00		
5/18/23	JPM 425 / Legal Work	1.70	722.50	
#12944	Attention to amicus; notes on the requirements for filing amicus brief; missing disclosure of funding; review their "absurd result" claims Milestone 03 appeal	425.00		
5/23/23	JPM 425 / Legal Work	0.30	127.50	
#12948	Attention to Kornberg extension request and amicus issue Milestone 03 appeal	425.00		
6/22/23	JPM 425 / Legal Work	1.30	552.50	
#13007	Initial look at Milestone brief; new arguments on Article XV; research on same Milestone 03 appeal	425.00		
6/24/23	JPM 425 / Legal Work	4.00	1,700.00	
#13009	Further work on review of Milestone	425.00		

Date 5/12/24
Time 2:39 PMLaw Offices
Client Billing Worksheet

Page 3

Moon :Mr. Mark Moon (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
			-----	-----
	opening brief: notes etc. on same Milestone 03 appeal			
6/27/23 #13014	JPM 425 / Legal Work On Milestone brief: check that Miller & Starr does not support their claim on Ghirardo; check all the times they cite XV in current brief as opposed to no citations at bankruptcy court Milestone 03 appeal	2.00 425.00	850.00	
6/29/23 #13015	JPM 425 / Legal Work Attention to new CA9 notices and rules and docket; (.4): Initial review of CMA amicus brief (2.1) Milestone 03 appeal	2.50 425.00	1,062.50	
7/2/23 #13019	JPM 425 / Legal Work In office organizing notes and CA9 items for case Milestone 03 appeal	0.40 425.00	170.00	
7/6/23 #13022	JPM 425 / Legal Work Research on Witkin re exceptions to usury law: get full witkin text on exceptions that makes clear that entities are exempt for loans and forbearances; but broker exemption is just for loans Milestone 03 appeal	1.60 425.00	680.00	
7/7/23 #13023	JPM 425 / Legal Work Reviewing brief to BAP on the usury issue for items to remove or edit; further on FRAP rule 6 on record on appeal from BAP. Milestone 03 appeal	3.00 425.00	1,275.00	
7/8/23 #13026	JPM 425 / Legal Work Further review BAP opinion on usury; work on the 1103 items listed in initial review of brief Milestone 03 appeal	1.60 425.00	680.00	
7/9/23 #13027	JPM 425 / Legal Work Work on response brief on usury Milestone 03 appeal	3.00 425.00	1,275.00	
7/25/23	JPM 425 / Legal Work	0.40	170.00	

Date 5/12/24
Time 2:39 PMLaw Offices
Client Billing Worksheet

Page 4

Moon :Mr. Mark Moon (continued)

Date/Slip#	Description	AMOUNT	TOTAL
		-----	-----
#13035	Some Milestone notes re BAP discussion of 1979 Amendment limited to loans to promote property sales Milestone 03 appeal	425.00	
8/15/23	JPM 425 / Legal Work	0.50	212.50
#13051	Work on BAP statements on won't rewrite law; other versions same Milestone 03 appeal	425.00	
8/18/23	JPM 425 / Legal Work	0.30	127.50
#13058	Further work on facts in response brief Milestone 03 appeal	425.00	
8/19/23	JPM 425 / Legal Work	0.50	212.50
#13061	Work on rules for preparation of supplemental record; FRAP 30 and FRAP 6 Milestone 03 appeal	425.00	
8/23/23	JPM 425 / Legal Work	0.70	297.50
#13068	Work on full facts and procedural history for the response section Milestone 03 appeal	425.00	
8/26/23	JPM 425 / Legal Work	2.00	850.00
#13070	More on cutting down the Response facts; additions to text in Legal discussion; revise same; review of current response section Milestone 03 appeal	425.00	
8/27/23	JPM 425 / Legal Work	1.30	552.50
#13072	Work on supplemental record: 23 documents; prepare in reverse chron; prepare TOC and page references Milestone 03 appeal	425.00	
8/28/23	JPM 425 / Legal Work	2.20	935.00
#13073	Review notes to assure response covers all items in brier; work on intro: rewrite response intro and add rec ords cites Milestone 03 appeal	425.00	
8/29/23	JPM 425 / Legal Work	3.30	1,402.50
#13074	Further Work on argument 3; that	425.00	

Date 5/12/24
Time 2:39 PMLaw Offices
Client Billing Worksheet

Page 5

Moon :Mr. Mark Moon (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
			-----	-----
	extension must be in writing; then to edits to response section; and tighten factual history Milestone 03 appeal			
8/30/23 #13076	JPM 425 / Legal Work Working on section re California case law applying usury to loans initially exempt; Westman, Strike, analysis of Buck to distill and simplify relevant facts: work on final edits of the "Ghirardo" sections, B, 1-8; Milestone 03 appeal	7.50 425.00	3,187.50	
8/31/23 #13077	JPM 425 / Legal Work Review and revise Westman Buck section; Milestone 03 appeal	1.30 425.00	552.50	
9/2/23 #13087	JPM 425 / Legal Work In on 1103 Opposition brief; revisions to BAP versions; drop #7, modify 8 and 9; Work on Art XV makes 1916.1 superfluous: research on XV; further work on the 2 new Art XV arguments; Revise main intro; review facts for additional items needed to add to Milestone record Milestone 03 appeal	5.40 425.00	2,295.00	
9/2/23 #13088	JPM 425 / Legal Work Review facts to get correct references to Milestone record and supp Moon excerpts [no charge] Milestone 03 appeal	0.00 425.00	0.00	
9/3/23 #13089	JPM 425 / Legal Work Review and revise Opposition portions of brief Milestone 03 appeal	0.50 425.00	212.50	
9/4/23 #13092	JPM 425 / Legal Work Work on Addendum with statutes Milestone 03 appeal	0.30 425.00	127.50	
9/5/23 #13093	JPM 425 / Legal Work Revise and finalize the 1103 Opposition portion; prepare TOC and	3.20 425.00	1,360.00	

Date 5/12/24
Time 2:39 PMLaw Offices
Client Billing Worksheet

Page 6

Moon :Mr. Mark Moon (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
			-----	-----
	TOA; combine this with 1117 cross-appeal portion; finalize and file with 9th cir Milestone 03 appeal			
9/12/23 #13100	JPM 425 / Legal Work Oversee preparation of paper copies of record and briefs [no charge] Milestone 03 appeal	0.00 425.00		0.00
9/13/23 #13176	JPM 425 / Legal Work Organize some items for 9th cir oral argument Milestone 03 appeal	0.40 425.00		170.00
11/7/23 #13187	JPM 425 / Legal Work Attention to Form 32 for 9 Cir oral argument; locate and file same Milestone 03 appeal	0.30 425.00		127.50
11/12/23 #13198	JPM 425 / Legal Work Attention to Oral argument notes Milestone 03 appeal	0.20 425.00		85.00
12/6/23 #13235	JPM 425 / Legal Work Amicus attorneys want to argue in support of Milestone; notes re same and avoiding doreclosure is part of plan to increase profits Milestone 03 appeal	0.40 425.00		170.00
1/14/24 #13285	JPM 425 / Legal Work Attention notice of Oral Argument from court: prepare and file acknowledgement of receipt: review materials sent with Notice re court procedures and security measures Milestone 03 appeal	0.40 425.00		170.00
2/26/24 #13373	JPM 425 / Legal Work Attention to Moon Amicus items for hearing; get missing docket items Milestone 03 appeal	0.30 425.00		127.50
2/29/24 #13377	JPM 425 / Legal Work Review 9th circuit orders on personal appearances at argument [no charge] Milestone 03 appeal	0.00 425.00		0.00

Date 5/12/24
Time 3:47 PMLaw Offices
Client Billing Worksheet

Page 7

Moon :Mr. Mark Moon (continued)

Date/Slip#	Description	AMOUNT	TOTAL
		-----	-----
		HOURS/RATE	
3/20/24	JPM 425 / Legal Work	0.00	0.00
#13402	Locating some items for appeal hearing [no charge] Milestone 03 appeal	425.00	
3/23/24	JPM 425 / Legal Work	2.30	977.50
#13411	On hearing preparation; items from Milestone Reply to address: Westman v. Dye discussion; credit sale meets "technical definition of loan" and contra law at pg 24 of our brief; claim that XV says usury ok if you lower the interest rate. Milestone 03 appeal	425.00	
3/24/24	JPM 425 / Legal Work	3.00	1,275.00
#13414	More preparation on Milestone appeal argument; numbers for profits on giving extension instead of foreclosure Milestone 03 appeal	425.00	
3/25/24	JPM 425 / Legal Work	1.10	467.50
#13416	Travel to and attend Oral argument in both appeals (half time to each) Milestone 03 appeal	425.00	
4/16/24	JPM 425 / Legal Work	0.30	127.50
#13448	Review 9th circuit memo decision affirming judgment in all respects; e-mail client; e-mail Moran Milestone 03 appeal	425.00	
<hr/> TOTAL BILLABLE TIME CHARGES		63.80	27,115.00
<hr/> TOTAL BILLABLE COSTS			0.00
<hr/> TOTAL NEW CHARGES			\$27,115.00

EXHIBIT C

Date 5/12/24
Time 3:50 PMLaw Offices
Client Billing Worksheet

Page 1

=====Selection criteria=====

Date range :1/19/23 through 4/16/24
 Slip numbers :All
 Attorney :All
 Client :Moon
 Activity :All
 Matter :Moon 17 appeal
 Hours :All
 Dollars :All
 Variance :not checked
 Billing status :All
 Slip status :All

Moon :Mr. Mark Moon
 11 Mandalay Court
 Redwood City, CA 94065
 Phone :415-608-3553
 Time rounded up to nearest 6 minutes(s)

Last bill :8/9/21 Next aging :5/30/24
 Last payment Amount

Date/Slip#	Description	AMOUNT	TOTAL
Date/Slip# Description		HOURS/RATE	-----
1/21/23 #12747	JPM 425 / Legal Work Detailed review of BAP decision on Epstein for potential cross-appeal Moon 17 appeal	0.90 425.00	382.50
1/24/23 #12767	JPM 425 / Legal Work Further research on cases under 1511; locate dye case and reversal; Attention to Topa as a breach of contract case. Moon 17 appeal	1.80 425.00	765.00
1/27/23 #12748	JPM 425 / Legal Work Organizing BAP and Adversary case files for information on potential cross appeal [no charge] Moon 17 appeal	0.00 425.00	0.00
1/27/23 #12749	JPM 425 / Legal Work Further 1511 resaearch on Epstein issue Moon 17 appeal	0.60 425.00	255.00
2/2/23 #12777	JPM 425 / Legal Work Attention to cross-appeal on interest issue to 9th Circuit; get procedures and forms for Cross-Appeal; draft message to Mark re appeal on post-jm issue; amounts involved and potential risks &	1.10 425.00	467.50

Date 5/12/24
Time 3:50 PMLaw Offices
Client Billing Worksheet

Page 2

Moon :Mr. Mark Moon (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
			-----	-----
	costs			
	Moon 17 appeal			
2/11/23 #12792	JPM 425 / Legal Work Research on 1511 and 1504 and prepayment of note under the Milestone promissory note: Attention to financial strength of Network Capital Moon 17 appeal	3.80 425.00	1,615.00	
2/13/23 #12795	JPM 425 / Legal Work Meeting with Moon re cross-appeal. Organize items for cross-appeal; File Notice of cross appeal Moon 17 appeal	2.40 425.00	1,020.00	
2/15/23 #12798	JPM 425 / Legal Work Organize BAP and other items for appeals [no charge] Moon 17 appeal	0.00 425.00	0.00	
2/22/23 #12814	JPM 425 / Legal Work Attention to items on new issue on appeal (.8) Back to facts presented in record in trial court: review of filings in trial court and BAP; Attention to discussions of 1504, 1511 and "can't profit from wrong" Get moon exhibits from trial court; extract and confirm (2.5) Moon 17 appeal	3.30 425.00	1,402.50	
3/9/23 #12851	JPM 425 / Legal Work Work on appeal notes for 9th; CC 1504 research; Moon 17 appeal	0.50 425.00	212.50	
3/27/23 #12872	JPM 425 / Legal Work Add notes from ALI brief seminar to Moon cross appeal notes Moon 17 appeal	0.30 425.00	127.50	
3/30/23 #12880	JPM 425 / Legal Work Research on procedural objections possible on post-maturity interest; Further research on 1504 cases and 1511 cases Moon 17 appeal	1.60 425.00	680.00	

Date 5/12/24
Time 3:50 PMLaw Offices
Client Billing Worksheet

Page 3

Moon :Mr. Mark Moon (continued)

Date/Slip#	Description	Hours/Rate	Amount	Total
5/18/23 #12945	JPM 425 / Legal Work Research on Witkin and cases on vallidity of tender of offer Moon 17 appeal	0.70 425.00	297.50	
5/31/23 #12958	JPM 425 / Legal Work Attention to argument that Moran offer to pay full bankruptcy claim was another 1504 tender Moon 17 appeal	0.40 425.00	170.00	
6/4/23 #13005	JPM 425 / Legal Work Research on 1717 and "one prevailing party" rule; cases Pressley, Akhar, Hsu, etc. Moon 17 appeal	1.50 425.00	637.50	
7/7/23 #13024	JPM 425 / Legal Work Research on whether the Moran motion to approve refi in bankruptcy qualifies as offer under 1504; Moon 17 appeal	1.50 425.00	637.50	
8/1/23 #13042	JPM 425 / Legal Work Analysis of Moran refi motion to consider "conditional" Organizing the cross-appeal notes; review BAP cross appeal brief for changes Moon 17 appeal	2.20 425.00	935.00	
8/9/23 #13046	JPM 425 / Legal Work Research on existing statutes are made part of contract Moon 17 appeal	1.10 425.00	467.50	
8/11/23 #13047	JPM 425 / Legal Work Work on drafting cross appeal brief; revise and edit facts; further research on 1504 tender; work on various parts of brief Moon 17 appeal	4.40 425.00	1,870.00	
8/14/23 #13048	JPM 425 / Legal Work Research on items in Montali order; expanded outline of full 1117 section Moon 17 appeal	1.00 425.00	425.00	
8/15/23	JPM 425 / Legal Work	0.50	212.50	

Date 5/12/24
Time 3:50 PMLaw Offices
Client Billing Worksheet

Page 4

Moon :Mr. Mark Moon (continued)

Date/Slip#	Description	Hours/Rate	Amount	Total
			-----	-----
#13050	Work on Topa case as overcharges as breach of contract Moon 17 appeal	425.00		
8/16/23	JPM 425 / Legal Work	1.50	637.50	
#13053	Work on motion for extension; e-mail to Kornberg re consent; prepare and file motion Moon 17 appeal	425.00		
8/17/23	JPM 425 / Legal Work	1.80	765.00	
#13057	Work on revising facts on cross appeal; memo to clarify facts; review JPM June 2019 offer; remove from facts and brief; further organization of facts Moon 17 appeal	425.00		
8/18/23	JPM 425 / Legal Work	1.00	425.00	
#13059	Work on facts in cross- appeal portion; evidence in record on first Network number and requests; further work on facts Moon 17 appeal	425.00		
8/19/23	JPM 425 / Legal Work	6.00	2,550.00	
#13060	Work on text of cross appeal; work on 1504 law; work on contract contains obligation to provide payoff number; Get main CACI law on breach of good faith and fair dealing; Moon 17 appeal	425.00		
8/20/23	JPM 425 / Legal Work	0.30	127.50	
#13062	Work on section on covenant of good faith; clean up the facts a bit Moon 17 appeal	425.00		
8/22/23	JPM 425 / Legal Work	3.30	1,402.50	
#13064	Work on organize and revise text cross appeal; draft sections on Jurisdiction, statement issues etc. Checking law on first impression and shepard's of Epstein Moon 17 appeal	425.00		
8/23/23	JPM 425 / Legal Work	2.50	1,062.50	
#13067	More on getting "intro" facts and working on legal discussion;	425.00		

Date 5/12/24
Time 3:50 PMLaw Offices
Client Billing Worksheet

Page 5

Moon :Mr. Mark Moon (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
			-----	-----
	adding more legal and items from BAP Moon 17 appeal			
8/26/23 #13069	JPM 425 / Legal Work Work on brief; work on CA9 rules, form 8 and form 15: prepare addendum statutes and more on facts; review current draft Moon 17 appeal	1.20 425.00		510.00
8/27/23 #13071	JPM 425 / Legal Work Research 1501 and cases; add cases on purpose to brief; cleanup and drop some; Review and revise cross appeal section Moon 17 appeal	1.70 425.00		722.50
8/29/23 #13075	JPM 425 / Legal Work On the factual history; provide references to CA9 record pages Moon 17 appeal	0.80 425.00		340.00
9/3/23 #13090	JPM 425 / Legal Work Work on revisions to 1117 cross-appeal portion on post maturity interest Moon 17 appeal	1.00 425.00		425.00
9/4/23 #13091	JPM 425 / Legal Work Trimming the "breach of contract" section in 1117; further work on addendum Moon 17 appeal	1.80 425.00		765.00
9/5/23 #13094	JPM 425 / Legal Work Revise and finalize 1117 cross appeal portion, TOC and TOA Moon 17 appeal	1.00 425.00		425.00
11/12/23 #13199	JPM 425 / Legal Work Initial review of Milestone Opposition on our appeal Moon 17 appeal	0.70 425.00		297.50
11/13/23 #13201	JPM 425 / Legal Work On Milestone Opposition; Attention to tender arguments raised in trial court; on their waiver argument and document 82; add to record Moon 17 appeal	1.70 425.00		722.50

Date 5/12/24
Time 3:50 PMLaw Offices
Client Billing Worksheet

Page 6

Moon :Mr. Mark Moon (continued)

Date/Slip#	Description	HOURS/RATE	AMOUNT	TOTAL
			-----	-----
11/14/23 #13203	JPM 425 / Legal Work Research on CFPB literature re any mention of "unconditional approval"; Some NCLC research on same; initial work on Reply draft with BAP items: tighted quotes from BAP. Moon 17 appeal	2.00 425.00	850.00	
11/15/23 #13206	JPM 425 / Legal Work Further drafting on Reply; Attention to issue of "abandoned" breach of contract: further work on same Moon 17 appeal	2.20 425.00	935.00	
11/18/23 #13211	JPM 425 / Legal Work Further work on Reply; bringing in items from Reply at BAP; modify abandon and 1511; Attention to tender; review lengthy prior notes on tender; cases on 1500, cases on 1504; cases on 1511 Moon 17 appeal	4.00 425.00	1,700.00	
11/19/23 #13212	JPM 425 / Legal Work More work on 1504 section; more cases, Walker and case cites Moon 17 appeal	1.50 425.00	637.50	
11/20/23 #13213	JPM 425 / Legal Work Further work on 1504 section; rearranging case law items; Walker, Rose, etc. moving to good faith effort to pay loan and evidence of ability to pay in the record; further on 1504 section and breach of contract Moon 17 appeal	6.20 425.00	2,635.00	
11/21/23 #13214	JPM 425 / Legal Work Further review; Review and revise draft; complete breach section and add para 15 from moon trial record and e-mails from same; Finalize; Moon 17 appeal	1.70 425.00	722.50	
11/22/23 #13215	JPM 425 / Legal Work Attention to Notice on paper copies [no charge] Moon 17 appeal	0.00 425.00	0.00	

Date 5/12/24
Time 3:50 PMLaw Offices
Client Billing Worksheet

Page 7

Moon :Mr. Mark Moon (continued)

Date/Slip#	Description	AMOUNT	TOTAL
		-----	-----
		HOURS/RATE	
11/22/23	JPM 425 / Legal Work	0.00	0.00
#13485	Prepare TOC , TOA word count certification; File reply with 9th Cir [no charge] Moon 17 appeal	425.00	
11/27/23	JPM 425 / Legal Work	0.30	127.50
#13220	Supervise print copies of 6 paper copies of brief for 9th cir [no charge] Moon 17 appeal	425.00	
3/23/24	JPM 425 / Legal Work	1.20	510.00
#13412	Preparation for arguent: Attention to Cross-appeal items; our brief their Opposition and our Reply Moon 17 appeal	425.00	
3/24/24	JPM 425 / Legal Work	0.80	340.00
#13413	More preparation on Cross appeal Moon 17 appeal	425.00	
3/25/24	JPM 425 / Legal Work	1.10	467.50
#13415	Attend Oral argument in both appeals (half time to each) Moon 17 appeal	425.00	
<hr/> TOTAL BILLABLE TIME CHARGES		76.90	32,682.50
<hr/> TOTAL BILLABLE COSTS			0.00
<hr/> TOTAL NEW CHARGES			\$32,682.50